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October 20, 2009

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2009-4 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, November 20, 2009**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
County-Assessed Properties Division
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" (www.boe.ca.gov/proptaxes/annocont.htm). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at www.boe.ca.gov/proptaxes/cld.htm. Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2009-4

October 20, 2009

100.0000 AIRCRAFT

100.0016 **Fractional Ownership Interests.** ~~An aircraft in which ownership has been divided into smaller fractional ownership interests, similar to a timeshare estate in real property without fixed dates of possession, may be taxable in California as a general aviation aircraft. Such fractionally owned aircraft may acquire taxable situs in California if the aircraft maintains a substantial presence in the state. If two or more states acquire the power to tax the aircraft owing to the aircraft's having acquired tax situs in their states, each state is to apportion its tax to the extent that the aircraft could also be taxed by another state. An apportioned value should be based upon the actual time the aircraft was in California.~~

~~If such an aircraft acquires taxable situs in California, the proper assessee of an aircraft that is operationally controlled by one entity and fractionally owned by multiple persons is either the entity or the fractional owners pursuant to Revenue and Taxation Code section 405. C 8/9/2006.~~

Delete – Superseded by Revenue and Taxation Code sections 1160-1162, added by Stats. 2007, Ch. 180, effective August 24, 2007.

170.0000 ASSESSMENT

170.0011 **Base Year Values.** ~~Revenue and Taxation Code section 110.1 subdivision (a) sets June 30, 1980 1 as the deadline for establishing 1975 base year values for those properties eligible for such values that were not actually appraised for 1975 as part of the normal appraisal cycle. After that date, 1975 base year values may not be changed unless a portion of the property is removed. Subsequent declines in value must be reflected on the assessment roll; however, this does not create a new base year value.~~

~~There is no such statutory limitation regarding base year values for years other than 1975. Based upon section 1 of article XIII of the California Constitution, the assessor can establish post-1975 base year values as follows:~~

Example #1

~~In January of 1983 it is discovered that a barn constructed in July of 1976 has never been assessed. The rest of the property, land and improvements, has a base year of 1975. However, since the barn was newly constructed in July of 1976, it should have been appraised as of the date construction was completed and assessed for the 1978-79 assessment year. In this situation, the barn should be valued as of July 1976 and that value factored forward (by the inflation factor not to exceed two percent per year) for the 1983-84 assessment roll, and escapes should be levied for the four preceding years using the appropriately factored value for each of those years.~~

Example #2

~~A property was underassessed in 1980 because of an unrecorded change in ownership. In February 1990 the change in ownership is discovered. The property should be reappraised at a 1980 base year value, and that value should be factored to 1990. The factored value would be enrolled for the 1990-91 assessment roll. In this case, escape assessments~~

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~~should be levied for the preceding eight years using the appropriately factored value for each of the those years.~~

~~The assessor should change a post-1975 base year value whenever he determined that his original estimate of market value is erroneous, but he must be careful to use only data that is appropriate for base year valuation. Any change in base year value would initiate a new assessment appeals period as authorized under Revenue and Taxation Code section 80 subdivision (a)(3). LTA 7/22/80 (No. 80/113); LTA 10/29/82 (No. 82/124).~~

Delete – While the annotation is correct, the backup correspondence is old and does not reflect current code sections.

170.0012 **Base Year Values.** ~~Increases in post-1975 base year values may be made by means of escape assessments whenever the assessor discovers an underassessment, whether due to a clerical error, an error in judgment, or otherwise, except for those values set by the local equalization board as specified in Revenue and Taxation Code section 80(a)(3). Escape assessments may be levied for no more than four years, except in the cases of fraud or collusion (six years) or unrecorded changes in ownership (eight years). LTA 2/8/83 (No. 83/14).~~

Delete – While the annotation is correct, the backup correspondence is old and does not reflect current code sections.

180.0000 ASSESSMENT APPEALS

180.0035 **Application.** ~~An assessment appeal in the form of a letter received during the application period may be treated as a timely filed, but incomplete, application of appeal. Prescribed forms should be completed within a reasonable time thereafter. C 9/21/79.~~

Delete – The backup correspondence is partially incorrect due to a 1982 law change. The basic part of this annotation and letter is that a letter may suffice as a formal appeal in lieu of an application being filed. This opinion is part of the Assessment Appeals Manual on page 21, which goes into more detail than this letter.

200.0300 BASE YEAR VALUE TRANSFER—GOVERNMENT ACQUISITION

200.0305 **Award Price.** For purposes of determining the value comparison, only the amount directly paid for the taxpayer's fee simple interest in the real property should be considered as the award or purchase price paid for property taken. Any other amount received for other types of interests in the property, such as a utility or temporary construction easement, should be excluded. C 4/29/2009.

200.0326 **Easement.** Property Tax Rule 462.500 requires ownership of both the property taken and the replacement property for a taxpayer to qualify for the exclusion from change in ownership provided in Revenue and Taxation Code section 68. An easement is an interest in the land of another, which entitles the holder of the easement to limited use or enjoyment of the other's land; it is not an estate of land, and there is generally no change in ownership upon a transfer or acquisition of an easement under Revenue and Taxation Code section 60. Even if the creation or acquisition of an easement constitutes a change in ownership, for purposes of determining whether property is "taken" under section 68, if the interest taken does not represent "ownership" of the property, it would not be eligible for relief under section 68 (either as property taken, or as replacement property). Since the taxpayer retains the ownership interest in the real property subject to the easements, the easements do not qualify as "property taken" under section 68. C 4/29/2009.

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220.0000 CHANGE IN OWNERSHIP

220.0332 **Leases.** ~~An assessor should look to the original term of the lease including written renewal options. If a lease term for less than 35 years is, before expiration, renewed or extended, and if the remaining term at the time of renewal or extension plus the renewal or extended term totals 35 years or more, there is a change in ownership of the entire property at that time.~~

~~If a lease term for more than 35 years is renewed or extended while more than 35 years of the lease term remain, the lessee is still considered to be the owner of the property and there is no change in ownership upon renewal or extension. If a lease term for more than 35 years is renewed or extended while less than 35 years of the lease remain, and if the remaining term at the time of renewal or extension plus the renewal or extended term remains less than 35 years, the lessor is considered to be the owner of the property and there is no change in ownership upon renewal or extension. There is a change in ownership at the end of the renewed or extended term, however, since there is, at that time, a termination of a leasehold interest which had an original term of more than 35 years. C 7/13/81; C 12/9/88.~~

Delete - The mere extension of a leasehold term to over 35 years, which was originally or at once already over 35 years, and for which a reassessment already occurred upon the lease's original creation or original extension to over 35 years, is not the "creation" of a lease and should not result in another reassessment. See new annotation 220.0357.

220.0351 **Leases.** ~~When a lease is amended to extend the lease term and the extension is pursuant to a lease amendment and not the exercise of an option granted in the original lease, the new lease term is then measured by the 35-year test to determine if beneficial ownership of the real property has changed. When a lease with an original term of 30 years is amended to extend the term an additional 10 years, a change in ownership will occur if the remaining term of the original lease plus the 10-year extension is more than 35 years.~~

~~A property is leased for a term of 40 years with no options. After 6 years, the lease is amended to extend the term an additional 10 years, resulting in a remaining term of 44 years. Since the lease term has been extended from 34 years to 44 years, primary ownership of the property has shifted from the lessor to the lessee because a new leasehold interest of more than 35 years has been created. Thus, a change in ownership of the real property has occurred. C 12/24/91.~~

Delete - The mere extension of a leasehold term to over 35 years, which was originally or at once already over 35 years, and for which a reassessment already occurred upon the lease's original creation or original extension to over 35 years, is not the "creation" of a lease and should not result in another reassessment. See new annotation 220.0357.

220.0357 **Leases/Term Extension.** If a leasehold was originally, or at one time, for a term of 35 years or longer, and if a reassessment had already occurred upon the lease's creation or extension to a term of 35 years or longer, the extension of the term back to 35 years or longer, when the remaining term is less than 35 years, does not result in a change in ownership if there were no other material changes in the terms of the lease made by the lease extension. However, if a leasehold term has at all times been under 35 years, the first extension of the leasehold term to 35 years or longer results in a change in ownership.. C 5/27/2009.

220.0468.005 **Partition.** A partition by two tenants in common of two jointly owned adjacent residential parcels, considered to be two separate appraisal units, which results in one former tenant in common receiving one parcel and the other former tenant in common

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receiving the other parcel, requires reassessment of a one-half interest in each parcel pursuant to Revenue and Taxation Code section 61(f). The partition exclusion must be applied to each and every separate single appraisal unit and does not apply to exchanges of separately owned appraisal units. C 4/17/2009.

220.0469 Partition. A parcel is owned by four brothers as equal tenants in common. One brother proposes to sever 25 percent of the land and subsequently combine it with an adjoining parcel that he owns. The other three brothers would remain co-owners of the remainder. A partition is a division of real property between co-owners. However, this does not mean that each co-owner must, as a result of the partition, receive title to a distinct divided interest. Rather, for property tax purposes, it is sufficient that one or more co-owners receives his or her proportionate share of the previously co-owned property. However, the market value of the parcel being severed must be the same as the market value of the portion of the original parcel that the one brother owned; otherwise, the partition exclusion would not be available and any interests transferred would be subject to reassessment. C 4/13/2009.

220.0470 Partition. Two adjoining parcels consisted of two commercial retail stores separated by a demising wall. Parcel 1 was co-owned by legal entity A and individual B. Parcel 2 was co-owned by legal entity A and individual C. Parcel 1 was split into two lots with entity A and B each taking ownership of a separate lot. Parcel 2 was split into two lots with entity A and C each taking ownership of a separate lot. Subsequently entity A combined its two lots into one, so that in the end there were three new lots owned by A, B, and C respectively.

Because Parcels 1 and 2 were separate appraisal units prior to the partition and the owners of the two parcels were not all the same, the partition of each parcel must be separately examined for change in ownership purposes. Thus, the assessor must establish and compare the fair market value of each new parcel that was created by the two partitions (before the merger of the two lots owned by entity A) to the fair market value of the corresponding lots prior to the partition. C 4/15/2009.

493.0000 GRANDPARENT-GRANDCHILD TRANSFER

493.0120 Son-in-Law. The grandparent-grandchild exclusion from change in ownership is available when all of the parents of the eligible transferees who qualify as the "children" of the grandparents have died or, in the case of a son-in-law, divorced. Thus, the exclusion applies where the parent of the grandchildren has predeceased the grandparents and the former husband/son-in-law was divorced from the deceased child prior to her death.

If the parent of the grandchildren has divorced and later remarried, then her second husband, the grandchildren's stepfather, would be the new son-in-law and, therefore, the "child of the grandparents." In this case, the exclusion would not apply unless the stepfather was also deceased at the time of the transfer. C 2/26/97.

Delete – Superseded by subsequent law change. Stats. 2005, Ch. 264, amended section 63.1 to provide that the requirement that the parents of the grandchild who are children of the grandparents be deceased does not apply to an in-law who is a stepparent of the grandchild.

493.0123 Step Transaction Doctrine. The statement of legislative intent expressed in section 2 of Chapter 48 of the Statutes of 1987 specifies that the step transaction or substance-over-form doctrine shall not be applied to prevent the application of the parent-child exclusion. This statement of legislative intent is not applicable to transfers between

~~grandparents and grandchildren because there was no grandparent-grandchild exclusion available at the time the statement was written. C 3/10/2000.~~

Delete – Superseded by subsequent law change. Stats. 2006, Ch. 224, amended the statement of legislative intent following section 63.1 to include step transactions involving grandparents and grandchildren.

493.0125 ~~**Surviving Son- or Daughter-in-Law.** The grandparent-grandchild exclusion from change in ownership is available when both of the parents (the middle generation) of the eligible transferees who are "children" of the grandparents for purposes of the exclusion have died. A "child" includes a surviving son-in-law or daughter-in-law if the marriage between the grandparents' child and the in-law was terminated by death and the in-law has not remarried. Thus, the grandparent-grandchild exclusion will not apply if the surviving in-law/stepparent has not remarried. C 8/16/99.~~

Delete – Superseded by subsequent law change. Stats. 2005, Ch. 264, amended section 63.1 to provide that the requirement that the parents of the grandchild who are children of the grandparents be deceased does not apply to an in-law who is a stepparent of the grandchild.

680.0000 PROPERTY STATEMENT

680.0025 **Exempt Personal Property.** Vehicles and equipment that are registered with the California Department of Motor Vehicles or the Department of Housing and Community Development and for which a vehicle license fee is paid are not the type of property subject to local property taxation. Accordingly, such vehicles and equipment are not required to be reported on the business property statement.

Property leased to or owned by private non-profit colleges, free public libraries, or free museums is not automatically exempt. Whether leased or owned by a qualifying organization, a claim for exemption must be filed, and the property may qualify for exemption depending on whether it is used exclusively for the organization's exempt activities. Thus, such property must be included on the business property statement. C 5/11/2009.

740.0000 SITUS

740.0005 **Aircraft.** ~~An aircraft in which ownership has been divided into smaller fractional ownership interests, similar to a timeshare estate in real property without fixed dates of possession, may be taxable in California as a general aviation aircraft. Such fractionally owned aircraft may acquire taxable situs in California if the aircraft maintains a substantial presence in the state. If two or more states acquire the power to tax the aircraft owing to the aircraft's having acquired tax situs in their states, each state is to apportion its tax to the extent that the aircraft could also be taxed by another state. An apportioned value should be based upon the actual time the aircraft was in California.~~

~~If such an aircraft acquires taxable situs in California, the proper assessee of an aircraft that is operationally controlled by one entity and fractionally owned by multiple persons is either the entity or the fractional owners pursuant to Revenue and Taxation Code section 405. C 8/9/2006.~~

Delete – Superseded by Revenue and Taxation Code sections 1160-1162, added by Stats. 2007, Ch. 180, effective August 24, 2007.

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880.0000(a) WELFARE EXEMPTION – IN GENERAL

880.0060 Construction in Progress. ~~As of January 1, 1992, Revenue and Taxation Code section 214.2(b) defines "facilities in the course of construction" to include those where construction has commenced but that are not yet finished and have not been abandoned. Construction is not considered abandoned if delayed due to reasonable causes and circumstances beyond the assessee's control, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect. LTA 4/9/92 (No. 92/30).~~

Delete - The annotated letter is in conflict with Assessors' Handbook section 267, which was adopted by the Board in 2004. AH 267, Page 28 (under Delays in Construction), states that delays in construction due to lack of funding is not considered a reasonable delay.

880.0148 Limited Liability Company. A limited liability company (LLC) is not disqualified from receiving an organizational clearance certificate merely because its sole activity is to hold title to real property that is used by its single, qualifying-organization member for exempt purposes provided that the LLC is organized to limit the liability of its member nonprofit and that its member actually performs exempt activities on the property in conformity with the LLC's formative document in addition to meeting all of the requirements of Property Tax Rule 136 and Revenue and Taxation Code sections 214 et seq. and 254.6. C 4/20/2009.

880.0156 Low Income Housing Credits. A limited partnership (operator) that operates a low-income housing property owned by another limited partnership can qualify for a supplemental clearance certificate even though it does not receive low-income housing tax credits or government financing for the property, as long as the property itself receives government financing or low-income housing tax credits and is subject to a regulatory agreement as required by Property Tax Rule 140(b)(1)(A). C 4/20/2009.